

# **Exhibit A**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA  
Plaintiff,

V.

DAVID W. KENT  
Defendant.

1:16-CR-385-DLC-1

**SENTENCING MEMORANDUM ON BEHALF OF DAVID KENT**

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scraping was done without Oilpro's permission and in violation of Oilpro's terms of use.<sup>20</sup>

Because Oilpro's terms of service prohibited "scraping," DHI's actions were likely "unauthorized" in violation of the same statute Mr. Kent pleaded to, 18 U.S.C. § 1030(a)(2)(C).

Importantly, Mr. Durney admitted that DHI concealed its scraping of Oilpro from the government at the same time it was cooperating to prosecute Mr. Kent.<sup>21</sup> To be clear, Mr. Kent has and does accept responsibility for his unlawful actions against Rigzone. But it is significant that DHI, in causing the government to initiate its investigation into Mr. Kent, failed to disclose its own similar misconduct directed at Oilpro.

When Mr. Kent learned of this Rigzone intrusion in 2015, he foolishly reacted by downloading additional resumes from Rigzone. Mr. Kent took the bulk of the resumes involved in this offense during this second intrusion.<sup>22</sup> Again, he copied the resumes of a large number of Rigzone's members. As before, Oilpro reached out to a small percentage of those individuals, and a portion of the persons contacted eventually joined Oilpro while simultaneously maintaining their affiliation with Rigzone.

Mr. Kent accessed approximately 796,000 Rigzone members' accounts, which contained approximately 586,560 unique email addresses.<sup>23</sup> Approximately 17.7% of those email addresses were later invited to join Oilpro, and approximately 35.7% of the individuals invited to join did in fact join.<sup>24</sup> In total, approximately 111,000 Rigzone members whose email addresses were

<sup>20</sup> Chana Depo. at 113:18 – 114:2, Ex. 4.

<sup>21</sup> Durney Depo. at 149:6 – 150:5, Ex. 3.

<sup>22</sup> PSR (Doc. No. 46) ¶ 38.

<sup>23</sup> PSR ¶ 45.

<sup>24</sup> *Id.*

obtained improperly by Mr. Kent became members of Oilpro.”<sup>25</sup> However, as explained in the Revised PSR, the government agrees “that there is no proof or indication that all 111,000 new Oilpro members joined based on Kent’s activities.”<sup>26</sup> And certainly, some joined independently of Mr. Kent’s conduct, just as many people maintain more than one online social media or professional networking profile. The exact number of users that Oilpro gained as a result of Mr. Kent’s actions remains unknown.

Later in 2015, Mr. Kent sought to place a valuation on Oilpro. Among other companies, he contacted DHI to gauge their interest in making an offer for his business that would aid him in reaching a valuation. DHI, however, was already aware of his intrusions and had contacted the government. Working with the FBI, DHI responded to Mr. Kent’s outreach by engaging in a lengthy telephone conversation with him and encouraging Mr. Kent to attend a business meeting in New York City to discuss his interest in selling Oilpro.

In these recorded conversations, which were produced in discovery, Mr. Kent focused on the qualities of Oilpro’s software platform. For example, he stressed how it could be adapted to other industries that DHI operated in, and that it would complement Rigzone’s business. The DHI participants repeatedly tried to steer the conversation to the number of members Oilpro had and how they were acquired. Mr. Kent answered those questions in a way that omitted his wrongful conduct, but he consistently sought to focus on his proprietary software system, not Oilpro’s subscriber constituents.

The reality is that Rigzone and Oilpro were two competitors working to advantage themselves in a competitive environment. This was the defining scope and the motivation for Mr.

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<sup>25</sup> *Id.*

<sup>26</sup> PSR at p. 29. *See also*, PSR ¶ 45.